DEPARTMENT OF JUSTICE

MEMORANDUM

TO: JULIE ROISEN, DIVISION ADMINISTRATOR, PROPERTY TAX DIVISION

FROM: JAMES D. MILLER, ASSISTANT ATTORNEY GENERAL

RE: INTERIM YEAR ASSESSMENTS

DATE: JUNE 20, 2017

A question was raised as to whether an assessor can adjust the valuation of a subset of properties within a class in an interim or even numbered assessment year. The hypothetical situation involves an assessor raising the assessed value of similar residential property located in a particular area of the assessing jurisdiction by 30 percent in an interim assessment year. The hypothetical assumes that the assessor determined through typical mass appraisal techniques that these properties were previously assessed at 30 percent below the fair market value of these properties as of January 1 of the current interim assessment year.

Section 428.4(1) provides that

> Property shall be assessed for taxation each year. . . . The year 1981 and each odd-numbered year thereafter shall be a reassessment year. In any year, after the year in which an assessment has been made of all the real estate in an assessing jurisdiction, the assessor shall value and assess or revalue and reassess, as the case may require, <u>any real estate that the assessor finds was incorrectly valued or assessed</u>, or was not listed, valued, and assessed, in the assessment year immediately preceding, <u>also any real estate the assessor finds has changed in value</u> subsequent to January 1 of the preceding real estate assessment year. . . . However, a percentage increase on a class of property should not be made in a year not subject to an equalization order unless ordered by the department of revenue.

(Emphasis added).

The Court in *Vogt v. Bd. of Rev. of Wapello County*, 519 N.W.2d 395, 396 (Iowa 1994) explained that:

> Under Iowa Code section 428.4 (1991) property is to be listed, valued and assessed during odd numbered years. On even numbered years, commonly called interim years, the valuation is locked into that of the preceding (odd numbered) year. Only if there was error in the preceding

> valuation, or a change in the value of the property, does the assessor adjust the valuation during an interim year.

See also, *Eagle Food Centers v. Bd. of Review of Davenport*, 497 N.W.2d 860, 862 (Iowa 1993) where the Court also set forth general principles governing interim year assessment protests by stating that

> Pursuant to our biennial system of real estate tax assessment, the year 1989 would have been an "assessment year" and 1990 an interim year. Iowa Code § 428.4. In an interim year, assessments of real estate are made only to the extent that the property was incorrectly valued in the assessment year, not listed in the assessment year, or experiences a change in value as of the assessment year. . . . Where the assessor revalued and changed the 1989 assessment in 1990, Eagle is entitled to protest the reassessment on any grounds set forth in Iowa Code section 441.37.

Under section 428.4, the assessor is authorized to make an interim year assessment on any property in order to correct a valuation error or to account for a change in the value of the property from the previous assessment year. Section 441.21 requires all property to be assessed at its actual value, which for all classes of property other than agricultural, shall not exceed its fair market value. Section 441.21(1)(g). All property must be assessed each year at its actual value and if that requires an increase or decrease in the valuation from the prior assessment or odd numbered year in order to arrive at actual value, then the assessor is obligated to make that change in the interim year in order to bring the property to its actual value.

The other question that was raised is whether the assessor can make an across the board percentage change to a group of properties within a particular class based on their location or some other similarity. Section 428.4 provides that "a percentage increase on a class of property shall not be made in a year not subject to an equalization order unless ordered by the department of revenue." Equalization years are also odd numbered years and under section 441.47 the Department is required to equalize "the levels of assessment of each class of property in the several assessing jurisdictions. . . ." The distinction between equalization and assessment functions was discussed in *Brinegar v. Iowa Dept. of Revenue*, 437 N.W.2d 585, 586 (Iowa 1989). There, the Court held that

> Assessment and equalization are different concepts and they have different purposes and methods of determination.
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> > [T]he distinction between assessment and equalization is crucial and well established:
> > Assessment is the act of placing a value for tax purposes upon the property of a particular taxpayer. Equalization, on the other hand, is the act of raising or lowering the total valuation placed upon a class, or subclass, of property in the aggregate. Equalization deals with all the property of a class or subclass within a designated territorial limit, such as a county, without regard to who owns the individual parcels making up the class or subclass. Assessment relates to individual properties; equalization relates to classes of property collectively.
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> *Board of Supervisors v. Department of Revenue*, 263 N.W.2d 227, 235-36 (Iowa 1978) (quoting *Lamm v. Barber*, 192 Colo. 511, 565 P.2d 538, 545 (1977)).

Reference in section 428.4 to "a class of property" refers to the equalization function being applied to an entire class of property, not the individual assessment of a subset of properties within a particular class. Section 428.4 prohibits the assessor or board of review from raising or lowering a class of property in the aggregate by a certain percentage. It does not prohibit the assessor from applying a percentage increase or decrease to a group of similarly situated properties through a normal mass appraisal process. Assessors generally implement a mass appraisal process utilizing a computer assisted mass appraisal (CAMA) system in setting values of the individual properties in their jurisdiction. This may result in an across the board increase or decrease of all similarly assessed properties in a given area, but that does not preclude mass appraisal techniques from being utilized in assessing individual properties. *See In re Johnson County* Appraiser, 47 Kan. App. 2d 1074 (Kan. Ct. of App. 2012).

The activity described in the hypothetical is an assessment function and is not prohibited by section 428.4 whether done in an assessment year or an interim year. In fact, not applying a uniform increase or decrease to similar properties could lead to allegations that individual properties that are increased are being assessed in an inequitable manner under section 441.37(1)(a). In *Eagle Food*, at 865, the Court criticized the interim assessment of a single mall property because

> Obviously, the assessment of Spring Village is not equitable when the income approach is not uniformly applied to comparable properties. It was

> also inequitable for the assessor to increase the land value of Spring Village 54% in 1990 while not making any adjustment as to land value of other shopping centers in the same area.

It would be my opinion that if it is determined that the fair market value of a subset of properties was below fair market value as assessed in a regular assessment year, the assessor is obligated to uniformly adjust that subset by making an interim assessment to ensure equality and that all properties are being assessed at actual or fair market value. Any affected taxpayer would have the right to appeal the increase of the interim assessment under any of the provisions available under section 441.37. *See Eagle Food, at 862.*

Please feel free to contact me if you have any questions.

JDM:cml

cc: JJ Severson